



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

W-6-3

APR 13 1996

Chiou Chen
ADEQ, APP Program
3033 N. Central Ave.
Phoenix, AZ 85012

Dear Ms. Chen:

Thank you for the submittal of ADEQ's draft application for primacy of the Underground Injection Control (UIC) Program. The Aquifer Protection Program administered by ADEQ provides a strong and effective means for protecting Arizona's groundwater.

This letter outlines the areas of concern that were identified during our regional review of ADEQ's draft application for UIC primacy. Comments #1, #2 and #3 address the issue of federal regulations that prohibit degradation of an aquifer as a result of underground injection. This issue is our primary concern with the ADEQ application and its resolution may require statutory changes at the state level. Comments #4 through #15 cover a range of issues that are unlikely to require statutory changes. I have proposed possible remedies where appropriate for each issue of concern.

1) AZ lacks statutory equivalent to CFR 144.12

40 CFR 144.12 prohibits the movement of fluid into underground sources of drinking water. AZ statutes allow injection into aquifers so long as BADCT and Aquifer Water Quality Standards are met at "the point of compliance." Because this can, in theory, allow degradation of an aquifer from the point of injection to the point of compliance (POC), the statute is not as restrictive as the federal program. The most straight forward remedy to this issue would be a statutory change. EPA remains open, however, to other means of addressing this issue. Any alternative approaches will ultimately need to be supported by a statement from the Arizona Attorney General that ADEQ has the authority under Arizona law for such approaches.

2) Exempted aquifer (reclassification) issue

40 CFR 144.7 and 146.4 exempt aquifers only when an aquifer 1) does not serve as a source of drinking water, and 2) cannot and will not serve as a drinking water source in the future because it is hydrocarbon or mineral bearing, or because it is too deep or remote, or because it is already heavily contaminated. AZ statutes, 49 ARS 224 c(3) and 49 ARS 250(a)

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respectively, are not as restrictive because the first allows an aquifer to be exempted (reclassified) based on a cost-benefit analysis, an option that is not permissible under the EPA program, and the second allows the director to exempt facilities ad hoc. There is no such comparable waiver under the EPA program.

3) Other exemption issues

Related to the issue above is 49 ARS 250 b(7) which exempts the class of community sewer systems. A clarification of the definition of a community sewer system may be needed, to ensure that the sewer is not in itself an injection well.

Under 49 ARS 250 b(11), the exempted class of closed facilities might have to be proved to have an inventory of zero. This is to guard against having an exemption of a well class where those wells may have been improperly closed, still pose a threat to groundwater, and, thus, still need regulation.

The following comments are not considered major issues, yet identify problems between federal regulations and AZ statutes or regulations. Since these problems could result in a less stringent state program, the issues must be addressed. In descending order, the issues indicate the areas where greater to lesser changes may have to be made.

4) Class II and III issue

Because the administration of the Class II program cannot be administered under the APP Program as it stands now, ADEQ should consider whether it wants primacy of the UIC program minus Class II wells. The MOA with AZ Oil and Gas Conservation Commission will not substitute as a primacy application and AZ Oil and Gas Conservation Commission would have to submit their own primacy application with the appropriate regulations. For Class III wells, AZ laws will have to be amended as proposed to be able to regulate the additional construction and operational restrictions imposed by the federal requirements.

5) Public participation in permitting issue

Though it appears that the intent of developing a public participation process was to be equivalent to that set out by the Clean Water Act and the Safe Drinking Water Act, based on the language of 49 ARS 208, AZ regulations (R18-9-124) do not authorize as extensive a public participation process as the federal program. Problem areas, where there are no state equivalents to federal requirements, include the following: preparation of a fact sheet, development of a mailing list for purposes of expanding receipt of public notices, a comment period of at least 30 days, public notice of any public hearing at least 30 days before the hearing, a provision for responding to citizen complaints whether or not ADEQ is taking action in a particular case, a system that encourages citizen reports of violations and

mandates written responses to all citizen complaints, and public notice of settlements of state enforcement actions with a 30 day public comment period.

Under federal regulations, the RCRA and UIC programs have the same public participation requirements for permits and enforcement. We understand that ADEQ has primacy for parts of the RCRA program and must therefore have the equivalent federal public participation requirements for this program. To resolve this issue, it may be possible to include a statement within the APP Program stating that it meets public participation requirements by concurring with the regulatory requirements for public participation under the RCRA program.

6) Septic system issue

The discrepancy here is that 40 CFR 144.1(g)(2) defines a septic system as a system that supports less than 20 persons a day, and the 49 ARS 241 defines it as anything with a capacity less than 2,000 gallons per day. It may be necessary to show that these measurements of capacity are equivalent. As well, clarification of the septic system class must be made to exclude industrial septic tanks. This could be done with a regulatory change indicating that by definition septic systems only receive domestic waste.

7) Emergency (temporary) permits issue

40 CFR 144.34 authorizes emergency permits for a maximum of 90 days, with a possibility of renewal. For Class I and III, emergency permits can be issued only if an imminent and substantial endangerment to human health would otherwise occur; for Class II, emergency permits can be issued to prevent irretrievable loss of oil and gas resources if there will be no movement of fluids into a USDW. AZ regulations (R18-9-119) allow the temporary permit to be issued for up to a year, and allow it "if circumstances which could not have been foreseen or controlled by the applicant do not allow the timely preparation and issuance of an individual APP".

8) Permit duration issue

40 CFR 144.35 puts a 10 year limit on the duration of Class I and V permits. AZ regulation (R18-9-118) allows permits to last the lifetime of the facility.

9) Enforcement issue

40 CFR 145.12 stipulates that states must have the authority to enter any site subject to regulation. 49 ARS 203 affords the director the same authority, but has provisions that the federal regulation does not. Those provisions include the following: that the owner or operator "shall be afforded the opportunity to accompany the director during inspections and investigations", and that "prior notice of entry...is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter" implying that in all other cases prior notice must be given before an inspection. Prior notice is

not required by federal regulation.

10) Permit issuance scheduling issue

40 CFR 144.31(c) specifies existing Class I-III operators must apply for a permit within 4 years of program approval. Under federal regulations, all Class I-III wells should have lost their authorization by rule status in June 1988. 49 ARS 241(c) authorizes a schedule for issuing permits by 2001, thus allowing Class I-III wells to exist by rule status longer than is authorized by federal regulations. Regardless of whether these wells do in fact exist, the longer time frame is not equivalent to that set by the federal regulations. As well, there needs to be clarification, possibly by means of a schedule, that wells in this class that exist by rule will be permitted in a timely fashion.

11) Monitoring and reporting issue

40 CFR 144.51, 144.54, and 146.13 require specification of monitoring requirements as fixed by the regulations for the different classes of wells, and requires reporting of all results. AZ regulations (R18-9-112,113) allow flexibility in the type of monitoring which is not equivalent to that set by 40 CFR 146.13, and require reporting only in cases of a permit violation.

12) Compliance schedule issue

40 CFR 144.53 requires compliance within 3 years. AZ regulations (R18-9-115) do not have such a time limit.

13) Plugging and abandonment issue

40 CFR 144.51(p) requires a plugging and abandonment plan and report for all wells. AZ regulations (R18-9-116) require closure, but not necessarily "plugging". To make this program item equivalent to the federal program, this discrepancy could be resolved with an addition of a definition wherein closure means the process of plugging and abandoning under an approved plan of such.

14) Dry well issue

It is unclear whether separate regulations for dry wells have been promulgated as allowed by Article 8 of the ARS. Under the federal program, dry wells follow Class V well requirements, so any AZ statutes or regulations to be promulgated in the future should ensure that dry wells and Class V wells receive equivalent regulations.

15) Class IV issue

Because the APP Program has no statute or regulation banning Class IV wells, it must rely on the ban of Class IV wells under the state RCRA regulations. A statement must be included within the APP Program verifying that there is no conflict in the regulations and that all regulatory requirements under other state programs for the Class IV ban issue will be adhered to.

Thank you for all the effort you and your staff have put into this draft primacy application. I am confident that we can work together to resolve each of these issues. Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Luisa Valiela".

Luisa Valiela
Source Water Protection Section

cc: Chris Sproul, ORC